

# **HIPAA Privacy Rule Checklists Section 164.520 – Notice of Privacy Practices for Protected Health Information**

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## HIPAA Privacy Rule Checklists

### Section 164.520 – Notice of Privacy Practices for Protected Health Information

#### I. Right to Notice

Every individual has a right to adequate notice of the uses and disclosures of protected health information that may be made by the covered entity, and of the individual's right and the covered entity's legal duties with respect to protected health information, except as limited by the following provisions:

- a. \_\_\_\_ An individual enrolled in a group health plan has a right to notice:
  - \_\_\_\_ From the group health plan, if, and to the extent that, such an individual does not receive health benefits under the group health plan through an insurance contract with a health insurance issuer or HMO; *or*
  - \_\_\_\_ From the health insurance issuer or HMO with respect to the group health plan through which such individuals receive their health benefits under the group health plan.
- b. \_\_\_\_ A group health plan that provides health benefits solely through an insurance contract with a health insurance issuer or HMO, and that creates or receives protected (and summary) health information or information regarding the individual's participation status, **must**:
  - \_\_\_\_ Maintain a notice under this section; *and*
  - \_\_\_\_ Provide such notice upon request to any person.

*Note:* The Notice requirements for health plans *below* are not applicable to a group plan as described in this provision.
- c. \_\_\_\_ A group health plan that provides health benefits solely through an insurance contract with a health insurance issuer or HMO, and does not create or receive protected health information *other* than summary health information or information regarding the individual's participation status is not required to maintain or provide notice under this Section.
- d. \_\_\_\_ An inmate does not have a right to notice under this Section, and these requirements do to apply to a correctional institution that is a covered entity.

#### II. Test for Contents of a Valid Notice

The covered entity must provide a notice that satisfies *each* of the following elements:

- a. \_\_\_\_ The notice is written in plain language.
- b. \_\_\_\_ The notice contains the following statement as a header, or otherwise prominently displayed: "THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY."
- c. \_\_\_\_ The notice contains a description:
  - \_\_\_\_ Including at least one example, of the types of uses and disclosures that the covered entity is permitted by this section to make for each of the following purposes: treatment, payment, and health care operations;

- \_\_\_\_\_ Of each of the other purposes for which the covered entity is permitted or required by this section to use or disclose protected health information without the individual's written consent or authorization;
- \_\_\_\_\_ **If** such use or disclosure as described in this subsection is prohibited or materially limited by other applicable law, the description reflects the more stringent law; *and*
- \_\_\_\_\_ Including sufficient detail to place the individual on notice of the uses and disclosures that are permitted or required by this provision and by other applicable law.
- d. \_\_\_\_\_ The notice contains a statement that other uses and disclosures will be made only with the individual's written authorization and that the individual may revoke such authorization in writing at any time, except to the extent that (1) action has already been taken, or (2) if the authorization was obtained as a condition of obtaining insurance coverage.
- e. \_\_\_\_\_ **If** the covered entity intends to engage in any of the following activities, the description contained in the notice includes a separate statement that:
  - \_\_\_\_\_ The covered entity may contact the individual to provide appointment reminders or information about treatment alternatives or other health-related benefits and services that may be of interest to the individual;
  - \_\_\_\_\_ The covered entity may contact the individual to raise funds for the covered entity;  
*or*
  - \_\_\_\_\_ A group health plan, or a health insurance issuer or HMO with respect to a group health plan, may disclose protected health information to the plan supervisor.
- f. \_\_\_\_\_ The notice contains a statement of the individual's rights with respect to protected health information and a brief description of how the individual may exercise these rights, as follows:
  - \_\_\_\_\_ The right to request restrictions on certain uses and disclosures of protected health information (e.g., treatment, payment, and health care operations), including a statement that the covered entity is not required to agree to a requested restriction;
  - \_\_\_\_\_ The right to receive confidential communications of protected health information from the covered health care provider by alternative means, as applicable;
  - \_\_\_\_\_ The right to inspect and copy protected health information as provided by § 164.524;
  - \_\_\_\_\_ The right to amend protected health information as provided by § 164.526;
  - \_\_\_\_\_ The right to receive an accounting of disclosures of protected health information as provided by § 164.528; *and*
  - \_\_\_\_\_ The right of any individual to obtain a paper copy of the notice from the covered entity upon request.
- g. \_\_\_\_\_ The notice contains a statement that the covered entity is required by law to maintain the privacy of protected health information and to provide individuals with notice of its legal duties and privacy practices with respect to protected health information;
- h. \_\_\_\_\_ The notice contains a statement that the covered entity is required to abide by the terms of the notice currently in effect;

- i. \_\_\_\_ For the covered entity to apply a change in a privacy practice that is contained in the notice to protected health information that the covered entity created or received prior to issuing a revised notice, the notice contains a statement that the covered entity reserves the right to change the terms of its notice and to make the new notice provisions effective for all protected health information that it maintains;
  - \_\_\_\_ This statement also describes how the covered entity will provide individuals with a revised notice.
- j. \_\_\_\_ With respect to complaints, the notice contains the following:
  - \_\_\_\_ A statement that individuals may complain to the covered entity and to the Secretary if they believe their privacy rights have been violated;
  - \_\_\_\_ A brief description of how the individual may file a complaint with the covered entity; *and*
  - \_\_\_\_ A statement that the individual will not be retaliated against for filing a complaint.
- k. \_\_\_\_ The notice contains the name, or title, and telephone number of a person or office to contact for further information;
- l. \_\_\_\_ The notice contains the date on which the notice is first in effect (which may not be earlier than the date on which the notice is published).

### III. **Optional Elements**

- a. In addition to the information as required above, if a covered entity elects to limit the uses or disclosures that it is permitted to make, the covered entity may describe its more limited uses or disclosures in its notice, provided that the covered entity may not include in its notice a limitation affecting its right to make a use or disclosure that is required by law or otherwise permitted to avert a serious threat to health or safety.
- b. For the covered entity to apply a change in its more limited uses and disclosures to protected health information created or received prior to issuing a revised notice, the notice must include a statement that the entity reserves the right to make changes to the notice.
- c. The covered entity must promptly revise and distribute its notice whenever there is a material change to the uses or disclosures, the individual's rights, the covered entity's legal duties, or other privacy practices stated in the notice.
- d. Except when required by law, a material change to any term of the notice may not be implemented prior to the effective date of the notice in which such material change is reflected.

### IV. **Providing Notice**

When providing notice, a covered entity must make the required notice available on request to any person in compliance with the following requirements:

- a. **Health Plans.** A health plan must satisfy each of the following elements:
  - \_\_\_\_ The health plan must provide notice\*:
    - \_\_\_\_ No later than the compliance date for the health plan, to individuals then covered by the plan;
    - \_\_\_\_ Thereafter, at the time of enrollment, to individuals who are new enrollees; *and*

- \_\_\_\_\_ Within 60 days of a material revision to the notice, to individuals then covered by the plan.  
  
    *\*Note:* The health plan satisfies these requirements if notice is provided to the named insured of a policy under which coverage is provided to the named insured and one or more dependants. If a health plan has more than one notice, it satisfies these requirements by providing the notice that is relevant to the individual or other person requesting the notice.
- \_\_\_\_\_ No less frequently than once every three years, the health plan must notify individuals then covered by the plan of the availability of the notice and how to obtain the notice.
- b. **Direct Treatment Relationship.** A covered health care provider that has a direct treatment relationship with an individual must comply with the following requirements:
  - \_\_\_\_\_ The provider must provide notice no later than the date of the first service delivery (including electronic delivery) to such individual after the compliance date for the covered health care provider;
  - \_\_\_\_\_ If the covered health care provider maintains a physical service delivery site, it must:
    - \_\_\_\_\_ Have the notice available at the service delivery site for individuals to request to take with them; *and*
    - \_\_\_\_\_ Post the notice in a clear and prominent location where it is reasonable to expect individuals seeking service from the covered health care provider to be able to read the notice; *and*
  - \_\_\_\_\_ Whenever the notice is revised, the provider must make the notice available upon request on or after the effective date of the revision (and in compliance with the above provision, if applicable).
- c. **Electronic Notice.** A covered entity that maintains a web site that provides information about the covered entity's customer services or benefits must:
  - \_\_\_\_\_ Prominently post its notice on the web site and make the notice available electronically through the web site; *or*  
  
    *Note:* If the first service delivery to an individual is delivered electronically, the covered health care provider must provide electronic notice automatically and contemporaneously in response to the individual's first request for service.
  - \_\_\_\_\_ Provide the required notice to an individual by e-mail, if the individual agrees to electronic notice and such agreement has not been withdrawn. *Note:* If the covered entity knows that the e-mail transmission has failed, a paper copy of the notice must be provided to the individual.  
  
    *Note:* Any individual who is the recipient of electronic notice retains the right to obtain a paper copy of the notice from a covered entity upon request.
- d. **Documentation.** A covered entity must document compliance with the notice requirements by retaining copies of the notices issued.

## V. **Joint Notice.**

Covered entities that participate in organized health care arrangements may provide notice if they comply with the following provisions:

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- a. \_\_\_\_ The covered entities participating in the organized health care arrangement agree to abide by the terms of the notice with respect to protected health information created or received by the covered entity as part of its participation in the organized health care arrangement;
- b. \_\_\_\_ The joint notice satisfies all of the requirements listed above in Section II, except that the statements may be altered to reflect the fact that the notice covers more than one covered entity; *and*
  - \_\_\_\_ Describes with reasonable specificity the covered entities to which the joint notice applies;
  - \_\_\_\_ Describes with reasonable specificity the service delivery sites to which the joint notice applies; *and*
  - \_\_\_\_ If applicable, states that the covered entities participating in the organized health care arrangement will share protected health information with each other, as necessary to carry out treatment, payment, or health care operations relating to the organized health care arrangement.
- c. \_\_\_\_ The covered entities included in the joint notice must provide the notice to individuals in accordance with the provisions of Section IV.